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07 NOV 29 PM 12:28
RICHARD W. WIEKING
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NORTHERN DISTRICT OF CALIFORNIA

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BMG MUSIC; SONY BMG MUSIC
ENTERTAINMENT; WARNER BROS.
RECORDS INC.; INTERSCOPE RECORDS;
ELEKTRA ENTERTAINMENT GROUP INC.;
MOTOWN RECORD COMPANY, L.P.;
LAFACE RECORDS LLC; FONOVisA, INC.;
and UMG RECORDINGS, INC.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RMW RS
6034

CV 07

BMG MUSIC, a New York general partnership;
SONY BMG MUSIC ENTERTAINMENT, a
Delaware general partnership; WARNER BROS.
RECORDS INC., a Delaware corporation;
INTERSCOPE RECORDS, a California general
partnership; ELEKTRA ENTERTAINMENT
GROUP INC., a Delaware corporation;
MOTOWN RECORD COMPANY, L.P., a
California limited partnership; LAFACE
RECORDS LLC, a Delaware limited liability
company; FONOVisA, INC., a California
corporation; and UMG RECORDINGS, INC., a
Delaware corporation,

Plaintiffs,

v.

JOHN DOE,

Defendant.

CASE NO.

**EX PARTE APPLICATION FOR LEAVE
TO TAKE IMMEDIATE DISCOVERY**

1 Plaintiffs, through their undersigned counsel, pursuant to Federal Rules of Civil Procedure 26
2 and 45, the Declaration of Carlos Linares, and the authorities cited in the supporting Memorandum
3 of Law, hereby apply *ex parte* for an Order permitting Plaintiffs to take immediate discovery.

4 In support thereof, Plaintiffs represent as follows:

5 1. Plaintiffs, record companies who own the copyrights in the most popular sound
6 recordings in the United States, seek leave of the Court to serve limited, immediate discovery on a
7 third party Internet Service Provider ("ISP") to determine the true identity of Defendant, who is
8 being sued for direct copyright infringement.¹

9 2. As alleged in the complaint, Defendant, without authorization, used an online media
10 distribution system to download Plaintiffs' copyrighted works and/or distribute copyrighted works to
11 the public. Although Plaintiffs do not know the true name of Defendant, Plaintiffs have identified
12 Defendant by a unique Internet Protocol ("IP") address assigned to Defendant on the date and time
13 of Defendant's infringing activity.

14 3. Plaintiffs intend to serve a Rule 45 subpoena on the ISP seeking documents that
15 identify Defendant's true name, current (and permanent) address and telephone number, e-mail
16 address, and Media Access Control ("MAC") address. Without this information, Plaintiffs cannot
17 identify Defendant or pursue their lawsuit to protect their copyrighted works from repeated
18 infringement.

19 4. Good cause exists to allow Plaintiffs to conduct this limited discovery in advance of a
20 Rule 26(f) conference where there are no known defendants with whom to confer.

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25 ¹ Because Plaintiffs do not yet know Defendant's true identity, Plaintiffs are unable to
26 personally serve Defendant with a copy of this motion. Instead, Plaintiffs will serve the Clerk of
27 Court pursuant to Fed. R. Civ. P. 5(b)(2)(C) ("If the person served has no known address, [service
28 under Rule 5(a) is made by] leaving a copy with the clerk of the court.") and will serve Defendant's
ISP with a copy of this motion. Additionally, if the Court grants this motion, Plaintiffs will ask the
ISP to notify the Defendants of the subpoena and provide Defendant with an opportunity to object.

1 WHEREFORE, Plaintiffs apply *ex parte* for an Order permitting Plaintiffs to conduct the
2 foregoing requested discovery immediately.

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4 Dated: November 29, 2007

HOLME ROBERTS & OWEN LLP

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6 By: 

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